

ZONING BOARD OF APPEALS
TOWN MEETING

COPY

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A CONSOLIDATED HEARING

RE: AT&T WIRELESS
SPRINT PCS
EASTERN TOWER

ZBA HEARING

TOWN OF WAYLAND

DECEMBER 14, 2004

Reported by:

Teresa E. Costello, CSR

1 APPEARANCES:

2
3 JAMES GRUMBACH
4 SHAUNT SARIAN
5 SUSAN KOFFMAN
6 ERIC GOLDBERG
7 STEVEN FUGARAZZO
8 AIDA GENNIS
9 MICHAEL THOMAS

10 Also Present:

11 Mike Dexter-Smith
12 Edward Collins
13 Stan Robinson
14 Patricia Reinhardt
15 Sheila Cuttell

16 ANDERSON & KREIGER, LLP
17 (by Brian S. Grossman, Esq.)
18 43 Thorndike Street
19 Cambridge, Massachusetts 02141-1764
20 for AT&T Wireless.

21 BROWN, RUDNICK, BERLACK, ISRAELS, LLP
22 (by Scott Lacy, Esq.)
23 121 South Main Street
24 Providence, Rhode Island 02903
25 for Sprint.

1 DECEMBER 14, 2004

2 MR. GRUMBACH: Good evening.

3 Welcome to the Tuesday, December 14th, 2004
4 hearing on the Wayland Zoning Board of
5 Appeals. Tonight we have two hearings. The
6 first hearing is the 8:00 o'clock continued
7 hearing on the application of Sprint
8 Spectrum for any necessary approval, special
9 permits, variances, as may be required to
10 appeal the decision of the building
11 commissioner, see letter dated June 18th,
12 2003 and to erect a 120-foot flagpole-style
13 monopole wireless communications tower and
14 associated wireless communications ground
15 equipment on land not within the wireless
16 communications services district under the
17 Town of Wayland zoning bylaws Chapter 198,
18 Sections 201.1.5, 203401, Article 6, SPA701,
19 701.1, 702, 801 table of dimensional
20 requirements, roadside business, minimum lot
21 area, frontage side, rear yard setbacks and
22 maximum height, 802 table of permitted
23 principal uses by district. 1001, 1001.2,
24 1002, 1002.1, 1002.2 and 1002.1.7,
25 the properties located at 135 Boston Post

1 Road which is in a roadside business
2 district and it's matter Number 03-34. Good
3 afternoon. Good evening.

4 MR. LACY: Good evening. For the
5 record my name is Scott Lacy. I'm with the
6 firm of Brown, Rudnick, Berlack and Israels.

7 MR. GRUMBACH: Where's Mr. Pare
8 tonight?

9 MR. LACY: Unfortunately Mr. Pare
10 could not attend tonight's meeting, so I was
11 sent in his place.

12 MR. GRUMBACH: So this is a
13 temporary change?

14 MR. LACY: Yes. What I wanted to
15 submit to the Board is that Sprint had
16 followed up with respect to the BECO poles,
17 and on October 28th I sent a letter to the
18 Board of Selectmen. This is the copy of the
19 letter and the attachments that were
20 submitted to the Board of Selectmen.

21 MR. GRUMBACH: Okay.

22 MR. LACY: In essence the letter
23 brought the Board of Selectmen up to speed
24 in terms of the location, the application,
25 the fact that there was a number of

1 neighbors --

2 MR. COLLINS: Mr. Chairman, point
3 of order. Is the letter submitted as an
4 exhibit in this matter?

5 MR. GRUMBACH: I don't know. I
6 received a copy of it. It went to the Board
7 of Selectmen. There was a hearing at the
8 Board of Selectmen.

9 MR. COLLINS: What I'm raising is
10 that counsel is explaining the contents of
11 it. If it is an exhibit then we all know
12 what the contents are. That's all.

13 MR. GRUMBACH: Why don't we let
14 counsel finish up, and I'll be glad to let
15 anybody see it. Go ahead, Scott.

16 MR. LACY: Just briefly the letter
17 requested that the Board grant Sprint
18 consent to file to zoning for a site on BECO
19 pole number 131. The Board of Selectmen did
20 respond to the letter in writing, and I
21 would like to submit both letters as an
22 exhibit.

23 MS. KOFFMAN: Are there copies
24 sufficient for all members of the Board?

25 MR. LACY: I do have copies. I

1 have a copy of all of the correspondence. I
2 provided one copy with all of the
3 attachments to be submitted for the record.

4 MR. GOLDBERG: We have the
5 October 28th letter. I have it in my
6 folder.

7 MS. KOFFMAN: I don't know what it
8 is he's submitting.

9 MR. GRUMBACH: It came to us in the
10 packet, the October 28th letter. What is
11 here is an October 28th letter from Attorney
12 Pare.

13 MS. KOFFMAN: A lot fatter than
14 what we got in our packet.

15 MR. GRUMBACH: It's got a plan.
16 It's got some -- looks like it's got a deed.
17 It's got a certified vote of the Board of
18 Directors of State Street Trust Company.
19 It's got another -- it's got an agreement
20 between Boston and Maine Railroad and Boston
21 Edison from 1962, and it's got a 1965
22 agreement between the railroad and Boston
23 Edison so that seems to be --

24 MS. KOFFMAN: So this is something
25 that we have received prior to the hearing

1 because our rules require things to be
2 submitted prior to the hearing so that both
3 Board members and members of the public can
4 see what's in it, and you're just giving us
5 a --

6 MR. LACY: Just a copy.

7 MS. KOFFMAN: One more copy.

8 MR. GRUMBACH: There's a
9 November 17, 2004 letter from Mark Long
10 (phonetics) town counsel to Attorney Pare
11 referencing a November 8th 2004 meeting of
12 the Board of Selectmen.

13 MR. LACY: To summarize the
14 contents of the letter which again was
15 submitted to the Board just indicated that
16 the town would not grant consent to allow
17 Sprint to file zoning with respect to BECO
18 pole number 131 and indicated be located
19 within the wireless communications overlay
20 district.

21 MS. KOFFMAN: I know that I've seen
22 a copy of this. I believe we all got a copy
23 of that in our packet as well.

24 MR. GOLDBERG: We have that, too.
25 November 17th?

1 MS. KOFFMAN: Yes. So that has
2 been available for the public to see as
3 well.

4 MR. ROBINSON: As a member of the
5 public, I'd like to say that I came in
6 yesterday to see if anything was filed, was
7 told that nothing had been filed.

8 MR. GRUMBACH: I don't quite
9 understand that. I don't disbelieve you,
10 but we all got the letter. I believe we got
11 both the letters in our packets that we get
12 routinely, and typically we don't get them
13 until they're filed and then typically
14 they're in the file, so that's unfortunate.
15 I would suggest you go in and talk to the
16 Building Department tomorrow. I'm not going
17 to ask Sheila to respond to it right now
18 because I don't think she's taking notes,
19 but they certainly should have been there.

20 MR. ROBINSON: It's not easy for me
21 to travel. It's not easy for me to travel.

22 MS. CUTTELL: We don't do the
23 research. They look through the files,
24 themselves.

25 MR. GRUMBACH: Right, but I mean,

1 normally -- forget about the cell tower
2 case. Normally if something comes in and it
3 gets sent out to the --

4 MS. CUTTELL: It's in the file.

5 MR. GRUMBACH: It's in the file.

6 So it should have been, but there is a
7 little difference with the cell tower?

8 MS. CUTTELL: We don't do any
9 research for zoning hearings. If people
10 want to see the application, they have to do
11 it themselves.

12 MR. GRUMBACH: But as to any
13 correspondence that comes in.

14 MS. CUTTELL: Is in those folders.
15 In the boxes.

16 MR. GRUMBACH: Should be in the
17 folders. I can't answer as to why it wasn't
18 there when you looked, Stan.

19 Mr. Lacy, thank you for bringing that to our
20 attention.

21 Now the purpose of tonight's
22 hearing was a status report. I recognize
23 that we had asked Sprint to look into the
24 BECO towers and Sprint was weighing its
25 options, and in light of this latest

1 happening has Sprint decided what it's going
2 to do?

3 MR. LACY: In light of the fact the
4 town is not going to make BECO pole 131
5 available in terms of proceeding with the
6 zoning, there isn't any additional
7 information that I can present to the
8 Board with respect to the BECO poles. Not
9 respective, it's no longer an option for
10 Sprint in terms of an alternative to the
11 present site.

12 MR. GRUMBACH: So Sprint is taking
13 the position that because of what it's done
14 and what's happened that it believes that
15 the BECO towers, all of them from Route 27
16 all the way over, I guess, are not viable
17 alternatives?

18 MS. KOFFMAN: We are not going to
19 have a substantive hearing tonight at all.
20 We're only going to have a status check.

21 MR. GRUMBACH: So I take it that
22 means that Sprint is going to go forward
23 with the proposal at 135 Boston Post Road?

24 MR. LACY: Correct.

25 MR. GRUMBACH: Does Sprint know how

1 much longer it intends to go and what sort
2 of evidence it intends to put on?

3 MR. LACY: Sprint is not intending
4 to present any additional evidence, so in
5 terms of when the Board could close the
6 public hearing from Sprint's perspective,
7 Sprint would not be presenting any
8 additional evidence so if the Board
9 decides --

10 MR. GRUMBACH: Sprint is prepared
11 to close the hearing?

12 MR. LACY: This evening.

13 MR. GRUMBACH: Okay.

14 MS. KOFFMAN: What about AT&T?

15 MR. GROSSMAN: The same. For the
16 record, Brian Grossman for Anderson &
17 Kreiger for AT&T Wireless. We think this
18 just buffers our original position that BECO
19 stansions were unavailable. We don't have
20 any further information that we'd like to
21 submit on this particular application.

22 MS. KOFFMAN: We had not given the
23 public an opportunity in 135 to participate,
24 so I would suggest --

25 MR. GRUMBACH: I think we should

1 schedule another hearing and then the public
2 can put in anymore evidence they want.

3 MR. GOLDBERG: I don't think it
4 should be more than a single evening's
5 presentation.

6 MS. KOFFMAN: Right, and then if we
7 could schedule a deliberation evening for
8 ourselves.

9 MR. GRUMBACH: That's fine. So we
10 don't have to -- I mean, we can decide on
11 the next hearing tonight, and then at the
12 next hearing we can decide a schedule for
13 the deliberation hearing and the final
14 decision. Mr. Collins.

15 MR. COLLINS: Thank you,
16 Mr. Chairman. Ed Collins, Plain Road. I
17 don't know whether this is consistent or not
18 with the prospect you just announced, but
19 counsel did say here -- what I'm asking is
20 whether counsel for Sprint, at this point
21 now tonight, is willing to curtail the
22 efforts it's made to look at alternative
23 sites between, as was said earlier tonight,
24 the center of town and I would say the
25 Weston town line?

1 MS. KOFFMAN: I'm very strongly
2 opposed to doing anything substantive
3 tonight since for -- since April we've
4 agreed that each hearing is going to be
5 simply a status check. I'm not prepared --

6 MR. COLLINS: Susan, as far as I'm
7 concerned, that's fine, as long as it's
8 clear what's happening here.

9 MR. GRUMBACH: That's fine, and I
10 think my understanding from Mr. Lacy is that
11 what has been put before us is the
12 evidentiary showing of what's been done. He
13 did some investigation.

14 They sent a letter and the letter
15 was responded to. If Sprint has a different
16 view and they bring it to the next hearing,
17 then we may not finish off at the next
18 hearing.

19 MR. COLLINS: Thank you. That's
20 agreeable to me.

21 MR. GRUMBACH: We've got to try to
22 work with the procedure that we can all deal
23 with.

24 MR. COLLINS: Absolutely.

25 MR. GRUMBACH: In the event it

1 wasn't clear, that's the way it looks to me
2 and Mr. Lacy. If that's not accurate, then
3 I would suggest you submit something in
4 writing before the next hearing. Okay?

5 So --

6 MR. COLLINS: That was a yes,
7 please? I'm just talking for the record.

8 MR. LACY: For the record.

9 MR. GRUMBACH: I interpret it as a
10 yes.

11 MR. LACY: For the record.

12 MR. GRUMBACH: Now the next hearing
13 is between Christmas and New Year's, and I'm
14 not going to be here, so I'm not going to
15 schedule it at the December 28th hearing.

16 MS. KOFFMAN: Calendar behind this
17 piece of paper will tell you all of next
18 year's dates.

19 MR. GRUMBACH: Fine. It looks to
20 me because there's a special town election
21 on January 25th which is a normal night that
22 we would be changing our second hearing for
23 January to either the 18th or the 26th.

24 I, personally, would prefer to go
25 on the 18th which is a Tuesday. 26th is a

1 Wednesday. How does the Board feel about
2 that?

3 MR. FUGARAZZO: I agree with that.

4 MR. GRUMBACH: Okay. Why don't we
5 schedule? Why don't we schedule the next
6 hearing on this for 8:00 o'clock on Tuesday,
7 January 18th? Is that all right with --

8 MR. LACY: Point of clarification.
9 Just trying to understand the timetable with
10 respect to if the hearing was continued
11 until the 18th and it was closed that
12 evening, this way they have opportunity to
13 present their case although it's my
14 understanding that some evidence has been
15 presented by the process, what would be the
16 timetable in terms of when the Board would
17 deliberate?

18 MR. GRUMBACH: That's why I thought
19 we'd wait until then to, you know, I was
20 not -- I didn't really know what was going
21 to happen tonight. I don't really want to
22 set a final schedule tonight. I'd rather
23 set a final schedule at that hearing when we
24 see what the abutters have to do. It's
25 clear to me what's going on, and we all can

1 just sit down. I mean, obviously we -- this
2 was consolidated with the other hearing. We
3 spent months and months on the other
4 hearing.

5 Obviously not everybody agrees with
6 what was done, but I wrote a
7 30-some-odd-page decision, and the two
8 properties are pretty similar from a
9 telephonic perspective, if that's the right
10 word, so I don't think we're going to need
11 the amount of time to write the decision
12 that we did last time.

13 Last time I was very conscious
14 about wanting to have a long period of time
15 because I knew it was going to be a long,
16 involved thing. We've had an awful lot of
17 evidence which was taken in the consolidated
18 hearing. Assuming we don't have an awful
19 lot of evidence in the next hearing, I'm
20 assuming we don't need an awful lot more
21 time. We'll need a night to deliberate and
22 then write a decision.

23 MR. GOLDBERG: If the applicant is
24 indicating that no additional evidence will
25 be presented by the applicants and we give

1 one hearing night to the abutters to say
2 their last piece, why not just schedule
3 that? At that point it will be closed, and
4 all we have left is to deliberate.

5 MS. KOFFMAN: The worst case
6 scenario would be that we have to change
7 that, so I feel --

8 MR. GOLDBERG: Why not set in stone
9 now what the closure of this thing is?

10 MR. GRUMBACH: Why don't we say
11 then 8:00 o'clock will be Sprint on
12 January 18th, and then the next hearing date
13 would be February 8th. You want to schedule
14 February now? You know, we could certainly
15 have a number of other --

16 MS. KOFFMAN: If we're going to use
17 up a whole night, it will be a problem
18 because we could run into problems with
19 residents' applications.

20 MR. GROSSMAN: Mr. Chairman, could
21 I have a minute to confer with Sprint's
22 counsel about the timing of hearings and
23 schedule?

24 MR. GRUMBACH: Sure. Does anybody
25 in the public want to think about it?

1 MR. COLLINS: I'd like to just make
2 a comment. I trust we have a representation
3 here from Sprint at least and I assume from
4 AT&T to the extent that things have not cut
5 off this application by filing a complaint
6 in the United States District Court. We
7 have a representation.

8 MR. GROSSMAN: We haven't filed a
9 complaint in this matter in 135.

10 MR. COLLINS: Thank you very much.
11 Then I hope we have --

12 MR. GRUMBACH: Absent talking to
13 counsel and changing that, you're not
14 intending to put on more evidence?

15 MR. GROSSMAN: No.

16 MR. COLLINS: I hope we have a
17 representation though that these applicants
18 have agreed to whatever continuance we're
19 talking about here.

20 MR. GRUMBACH: I don't think
21 there's a -- I mean, a continuance has been
22 granted in the past.

23 MR. COLLINS: I know that. I don't
24 want to face an argument somewhere in the
25 future.

1 MR. GRUMBACH: I think
2 Miss Koffman is drafting a continuance now,
3 and it probably is helpful to schedule all
4 the dates so we can factor them in.

5 MR. GOLDBERG: Up to this point
6 anyway it was agreed that this was a status
7 hearing anyway, so there was no anticipation
8 that there would be any substantive
9 discussion.

10 MR. COLLINS: I understand that,
11 but I hope they're not going to spring on us
12 at some later point that we did not timely
13 act as the present complaint has alleged a
14 lot of fatuous allegations.

15 MS. PATTON: Mr. Chairman, may you
16 name the five people who are now on the
17 panel?

18 MR. GROSSMAN: There's only four.

19 MS. PATTON: There's four of you.

20 MR. GRUMBACH: Only four of us --
21 well, have any of the alternate --

22 MR. GOLDBERG: No, just the four.
23 Michael is new.

24 MR. GRUMBACH: That's a good point.
25 It's only four Board members. Eric, Susan,

1 Steve and myself.

2 MS. PATTON: Thank you.

3 MR. GROSSMAN: Can we have that
4 break so I can confer?

5 MR. GRUMBACH: What would you like,
6 about five minutes?

7 (Brief Recess.)

8 MR. GRUMBACH: Mr. Grossman and Mr.
9 Lacy, have you had a chance to confer?

10 MR. LACY: Yes, we have. With
11 respect to the additional information --

12 MR. GRUMBACH: What additional
13 information?

14 MR. LACY: With respect to
15 continuing the hearing until the 18th, we
16 have no problem continuing the hearing to
17 the 18th with the understanding that on the
18 18th the hearing would be closed and a
19 decision would be rendered by the end of
20 January. We could continue to provide
21 extensions up until the end of January with
22 respect to this matter and filing of a
23 decision.

24 MR. DEXTER-SMITH: Mr. Chairman --

25 MR. GRUMBACH: That does not sound

1 like it gives us an awful lot of time.

2 MR. LACY: It will be two weeks.

3 MR. GRUMBACH: One thing which has
4 been brought to my attention is that we will
5 need to ask David Maxson to come to the
6 hearing. We didn't know tonight that we
7 were going to be scheduling the final
8 hearing. We haven't contacted David Maxson.
9 We don't know if he will be able to come
10 here.

11 Secondly, my understanding is he's
12 still owed money from both applicants both
13 as to the last case and this case. That's a
14 serious matter. He's not doing this for
15 charity. He deserves to be paid, so we have
16 to have an assurance that you're going to
17 pay him and that you have paid him, so
18 frankly I don't think it's fair for you to
19 tell us that you're not putting in more
20 evidence and for you to tell us that you're
21 going to give us 14 days to make our final
22 decision, so I'm going to tell you on the
23 record right now that I don't think that's a
24 fair position that you're putting us in.

25 You may want to go out in the hall

1 and talk to Mr. Grossman about it, and you
2 may decide the same thing and so be it, but
3 I really don't think -- I don't understand
4 why you haven't paid his bills, and I don't
5 understand why you're putting us under such
6 a tight schedule.

7 I know it's important for you to
8 move along, but we allowed you to suspend
9 this hearing in March, okay? We've now gone
10 ten months and all of a sudden you're in a
11 rush and I don't -- I don't understand that,
12 so maybe you'd like to go out in the hall
13 and talk a minute.

14 MR. LACY: Okay.

15 MR. COLLINS: Can I comment before
16 they do, Mr. Chairman?

17 MR. GRUMBACH: Sure.

18 MR. COLLINS: I appreciate your
19 remarks and I would point out with respect
20 to the 137 Boston Post Road application
21 which was pursued hand-in-glove on the
22 applicant's own representations for many
23 months with the 135 Boston Post Road
24 application, we now have a lawsuit in the
25 United States District Court brought by AT&T

1 which contains a number of our allegations.

2 A number of them with respect to
3 this Board and some other people in this
4 room I regard as totally scurrilous to
5 understate the situation. I understand that
6 they want to make a legal argument. You
7 know, that's fine.

8 As I said to somebody else earlier
9 tonight, I'm a member of the Lawyers'
10 Benevolent Society and all of that, but a
11 number of those allegations are scurrilous,
12 I think, and they relate to timing and
13 allegations of deliberate delay and that
14 sort of thing, and I don't want to see
15 either of these parties, AT&T or Sprint, try
16 at some later point to take advantage of
17 these disingenuous, dishonest arguments, so
18 I want to say that from my own point of
19 view, and I'm only speaking for myself here
20 this evening, that's a real issue, so if
21 they want to talk about what they want to do
22 in the future, I think it would be great if
23 they could factor that in. Thank you.

24 MR. GRUMBACH: Okay.

25 MR. DEXTER-SMITH: Mr. Chairman,

1 Mike Dexter-Smith, 8 Pinebrook Road. When
2 we started this whatever it was, two years
3 ago you, yourself, said that these would be
4 treated two commingled applications. We've
5 now combined them as two separate
6 applications. We, the abutters, have
7 presented based upon 135 and put into the
8 record and TCA very clear about evidence put
9 in the record, and I would want some
10 clarification from someone, a lawyer, that
11 in fact, we as the abutters don't have to
12 put all the same information that we've put
13 on 137 in for 135 again.

14 MR. GRUMBACH: Well, right now --

15 MR. DEXTER-SMITH: You shake your
16 head. Just a second if I may,
17 Mr. Chairman. You shake your head, but we,
18 the abutters, don't completely accept that
19 we don't have to put all of the information
20 that we put in on 137 in for 135 again, so
21 that the record is fully, fully complete.

22 MR. GRUMBACH: Thank you for making
23 that statement, but I will tell you as a
24 person who chaired the hearings, the
25 evidence was taken from both hearings. They

1 were fully consolidated and as far as --

2 MR. COLLINS: Then I believe you
3 can make a decision now on those two things.
4 There is no difference, as you said
5 yourself, to 135 and 137. These towers are
6 in falling distance of each other. They
7 would fall on top of each other.

8 MR. GRUMBACH: We're not going to
9 start deliberations now, but if you feel
10 that way then you come to the next hearing
11 and you take the position that no more
12 evidence is necessary.

13 MR. DEXTER-SMITH: I'm not taking
14 that position for the abutters. We're going
15 to wait and see what -- find that out, but I
16 don't want to be stuck with one hearing and
17 that we would be stopped at the end of one
18 hearing if we believe that we've got to put
19 all of that information back on.

20 MR. GRUMBACH: You don't have to
21 put that on. In fact, I don't -- my view,
22 personally, is that if there have been any
23 changes in circumstances since that hearing
24 and Sprint has put in two pieces of evidence
25 that they believe is a change in

1 circumstance or additional evidence, and I
2 think the public should have the same
3 opportunity to put in any additional
4 evidence, and we want to have Mr. Maxson
5 here to see if there's anything, in his
6 view, that requires a change, and that's why
7 for me it's precipitous tonight to say we
8 will have one more hearing and it's going to
9 be on such and such a date, and we're going
10 to have deliberations on such and such a
11 date and then, you know, we'll make a
12 decision because I just don't know. We
13 don't have all the information right here.

14 MS. KOFFMAN: Mr. Chairman, I would
15 be delighted to incorporate by reference all
16 of the documents all of which are in both --
17 physically have been submitted to both 135
18 and 137's files. There are duplicate
19 documents in both files. The Building
20 Department copied everything that came in
21 and put a copy in both places physically,
22 and I would be delighted to incorporate by
23 reference the information that we heard from
24 the public and all of those documents so the
25 public is not forced to have to recopy,

1 re-photo, reproduce and we sit here
2 re-hearing exactly the same information.

3 MR. GRUMBACH: We shouldn't have to
4 re-hear it, but if there's an easy way to
5 put it in for the public, that's fine.

6 MR. GOLDBERG: Would you entertain
7 the notion of requiring the applicant to
8 stipulate that the abutters' presentation
9 under 137 applies in total, in full, for all
10 purposes under 135 to satisfy the abutter's
11 concern that their voices have not been
12 heard?

13 MR. GRUMBACH: Is there any
14 question but that it applies? I'm
15 addressing that to both Sprint and AT&T
16 which are applicant and co-applicant in both
17 cases and certainly when I -- when we
18 consolidated the two hearings, my
19 understanding is it was consolidated by
20 agreement, and all evidence was coming in in
21 both hearings.

22 MR. GROSSMAN: That's true and if
23 it helps as far as the hearing schedule
24 goes, certainly. I mean, I don't think
25 anyone wants to stand up and give the

1 presentation again and the applicants sit
2 through a presentation we've heard before.

3 In the same respect hopefully we
4 can then use that to help shorten the time
5 frames a little bit as far as when we're
6 going to be able to have deliberations and a
7 vote.

8 MR. GOLDBERG: But your voice has
9 been heard and we've been sued by your
10 client, and I think it's more important for
11 us as a Board and to abutter's concern that
12 Sprint, quite frankly and respectfully,
13 indicates whether there's consent or
14 stipulation that the evidence submitted has,
15 for all purposes, can be utilized for
16 Sprint's application.

17 MR. LACY: To reiterate what
18 counsel said, Sprint wouldn't have a problem
19 with that stipulation with respect to the
20 evidence that's been submitted.

21 MR. GRUMBACH: It was first
22 Mr. Grossman on behalf of AT&T, and then Mr.
23 Lacy, on behalf of Sprint, stipulating that
24 the evidence that's been put in applies to
25 both cases.

1 My memory, although it's been a
2 while, is that most of the evidence was the
3 same except that each of the companies had
4 their own siting consultants, so there was
5 slightly different site acquisition
6 testimony, and there might have been a
7 couple of other experts that were different,
8 but essentially the testimony was the same.

9 MR. GROSSMAN: The only experts I
10 think that were different were the radio
11 frequency engineers and myself and Ed Pare.

12 MR. GRUMBACH: Right. They had
13 different siting people who went out.

14 MR. GROSSMAN: Chris Dwight and
15 Gerry Squires and --

16 MR. COLLINS: Ed Collins again. I
17 trust we have a stipulation that all of the
18 evidence, whichever way it cuts, and whether
19 there is an applicant, whether there was an
20 expert for applicant A and a different
21 expert for applicant B, I think the
22 stipulation -- I trust the stipulation is
23 that all the evidence that has previously
24 been introduced in this case applies to both
25 of these applications.

1 MS. KOFFMAN: And both applicants
2 including all of the evidence that's been
3 put in by the public, so that no one has to
4 put in all that evidence again.

5 MR. COLLINS: That's correct.
6 Thank you.

7 MS. KOFFMAN: Mr. Chairman, then
8 perhaps only AT&T on the 18th we can simply
9 deliberate.

10 MR. GRUMBACH: No, because I don't
11 think that we've heard from the public if
12 they don't want to put in more evidence, and
13 we haven't heard from David Maxson who is
14 not here tonight who we haven't had a chance
15 to call and tell that we're having another
16 hearing; that we are, you know, winding down
17 the evidence. Yes. Could you give me your
18 name?

19 MS. SELDON: Stephanie Seldon
20 (phonetics), 151 Plain Road. Could I just
21 understand in terms of on the public hearing
22 issue, when you speak of a continuance to
23 January, did you have before you tonight a
24 formal application from Sprint on the BECO
25 131, or was it subsequent to the letter that

1 went before the selectmen? Do you have an
2 application on the BECO?

3 MR. GRUMBACH: There is no
4 application. No application has ever been
5 filed on the BECO tower. 135 Boston Post
6 Road is the case that we're hearing tonight,
7 and that is the case that's going to be
8 heard presumably on January 18th.

9 MS. SELDON: Some of the same
10 public opinion that I think we all came here
11 to express tonight even though many of us
12 are from Plain Road, probably we would come
13 again in January to express, if we're not
14 going to have a public comment session
15 tonight, we'd like to have it in January.

16 MR. GRUMBACH: We're not going to
17 have it tonight. That's fine. Give us your
18 name.

19 MS. SCHRIVER: Kathy Schriver,
20 3 Fields Lane. Can you clarify the request
21 for a closed hearing that I heard earlier?

22 MR. GOLDBERG: Not a closed
23 hearing. Closing of the evidence.

24 MR. GRUMBACH: We are not allowed
25 to have closed hearings. The open meeting

1 laws.

2 MS. KOFFMAN: We have to close the
3 public portion.

4 MR. GRUMBACH: And the evidence.

5 MS. GENNIS: So just clarify that.

6 MR. GROSSMAN: Clarify.

7 MR. LACY: For the record again I
8 was asking on the 18th if the Board could
9 close the public hearing.

10 MR. GRUMBACH: Meaning the
11 evidence.

12 MR. DEXTER-SMITH: Mr. Chairman,
13 I'm sorry. Did we get an answer from AT&T
14 and Sprint if they were accepting all of the
15 evidence or partial?

16 MR. GRUMBACH: That's the way I
17 heard it, Mike. There is going to be a
18 transcript tonight. You're welcome to look
19 at the transcript.

20 MR. DEXTER-SMITH: Because there
21 was different people on different sides, do
22 we have to have those experts back again for
23 the public hearing?

24 MR. GRUMBACH: You know, I'm
25 assuming that as I recall we actually heard

1 from all the experts whether they were on
2 135 or 137 before Sprint decided that it was
3 going to seek a continuance, so I think
4 we've heard from all of their experts.

5 MR. DEXTER-SMITH: I'm not sure all
6 the abutters had a chance to have a go at
7 their witnesses. If they will accept, if
8 they will agree that they will accept all
9 the evidence from 137 on the 135 file, I'll
10 be quiet.

11 If they won't, Mr. Chairman, I
12 suggest they got to bring back their -- if
13 they want different witnesses they've got to
14 bring back those witnesses so that they can
15 be asked questions by the abutters.

16 MR. GRUMBACH: You know, I don't --

17 MR. DEXTER-SMITH: I'm not trying
18 to be a pain. The CCA very specifically
19 says we -- this is going to go to court in
20 one way or another. We need a file full
21 that says 135 Boston Post Road, right?
22 There's not one page in there that says, Oh,
23 nobody turned up and nobody filed it, put
24 any papers in this file. That is what we
25 are going to be measured on by a court of

1 law. Not --

2 MR. GRUMBACH: One thing you should
3 do between now and the 18th of January is
4 you should go through the transcripts and
5 the evidence and if there were any
6 particular witnesses that you don't think
7 that the public had an opportunity to
8 cross-examine, then you bring that up.
9 They've said they're not putting in anymore
10 evidence, so they've made their position
11 clear, and if you feel that that's
12 meritorious because a particular witness
13 wasn't here for cross-examination, that's
14 fine.

15 If you feel that a particular
16 rebuttal witness is important, go ahead.
17 That's what we're going to do on the 18th.

18 MR. DEXTER-SMITH: Okay.

19 MR. GRUMBACH: Anybody else?

20 MR. COLLINS: Thank you,

21 Mr. Chairman.

22 MR. GRUMBACH: I think what I would
23 like to do then is schedule -- oh, did you
24 have a chance to go outside and talk?

25 MR. LACY: Not yet.

1 MR. GRUMBACH: Why don't you step
2 outside --

3 MR. GROSSMAN: I sat back down.

4 MR. GRUMBACH: -- and talk in light
5 of what I said?

6 (Brief Recess.)

7 MR. GRUMBACH: We're back.

8 Mr. Lacy and Mr. Grossman, have anymore
9 input for us on the hearing schedules?

10 MR. GROSSMAN: We do. We were
11 talking about having a January 18th hearing
12 and then the proposal was 14 days thereafter
13 we'd have a written decision. Talked it
14 over with counsel for Sprint, and what we'd
15 like to do is this.

16 We're willing to grant the Board a
17 continuance until January 31st to render a
18 final decision. Have a hearing on the 18th.
19 Have one before. Have one after. Have four
20 hearings before or after, but we'd like to
21 see -- from our position we'd like to be
22 able to try and shorten this a little bit
23 especially in light of the stipulation
24 regarding the evidence presented by the
25 abutters and everyone else with 137 with 137

1 applying to 135. We can condense this time
2 frame a little bit and save everybody a lot
3 of additional time and effort.

4 MR. GRUMBACH: Okay. I'm not sure
5 I heard any change in your position. I
6 gather you want to move along quickly.
7 You're content to have the next hearing on
8 January 18th. I didn't hear you say
9 anything about paying the expert.

10 MR. GROSSMAN: This is the first --
11 I think this is the first I remember hearing
12 about owing Mr. Maxson
13 so --

14 MR. COLLINS: It's not true.

15 MR. GROSSMAN: I heard Mr. Collins
16 comment which said it wasn't true. Said
17 first I remember. I didn't say it's the
18 first time. It's been a long process, so
19 I'll certainly -- I'll talk to my client
20 about it and do what we can to get
21 Mr. Maxson's bills paid. It's never been a
22 problem in the past. I wouldn't anticipate
23 it would be one now.

24 MR. GRUMBACH: Well, I'm assuming
25 he will be spending a couple of extra hours

1 if he's going to be coming to the hearing on
2 the 18th, and one of the questions I'm going
3 to ask him is if he thinks anything further
4 has to be done to render a decision on 135
5 given this additional evidence you have
6 brought in, and also I believe there's one
7 other change in circumstance. I believe
8 that the Weston tower has come on line.

9 MR. GROSSMAN: Which one? There
10 are actually two Weston police. The town of
11 Weston issued an RFP and accepted two
12 separate bids. There's the AT&T Wireless
13 Sprint flagpole.

14 MR. GRUMBACH: That's the one I'm
15 talking about.

16 MR. GROSSMAN: And then there was
17 the Cingular monopole which was set further
18 back.

19 MR. GRUMBACH: But your evidence
20 was printed based on the AT&T, Sprint
21 monopole so I think that --

22 MR. GROSSMAN: AT&T, Sprint
23 monopole has not been constructed yet.

24 MR. GRUMBACH: Oh, it has not?

25 MR. GROSSMAN: No. It was what was

1 the Cingular bid occupied by, I think also,
2 T-Mobile and Verizon.

3 MR. GRUMBACH: So then that has not
4 happened?

5 MR. GROSSMAN: That's correct.

6 MR. GRUMBACH: Well, I still --
7 what I'm planning to do is contact
8 Mr. Maxson and see if he can come here on
9 the 18th, and I have no idea what he's going
10 to say on the 18th.

11 I'm assuming he'll come even though
12 he hasn't been paid, and I'm certainly going
13 to tell him that we're going to expect you
14 to pay him and to pay him quickly.

15 MR. GROSSMAN: Could you ask
16 Mr. Maxson to send me the latest invoice?

17 MR. GRUMBACH: Sure.

18 MS. KOFFMAN: No. I will send you
19 the latest invoice. The money has to go
20 through the town. However, there is a small
21 balance of about \$316.876 in this case,
22 thereabouts. In this matter there is a
23 deficit of about \$650 in the 137 matter.

24 MR. GROSSMAN: 600 roughly?

25 MS. KOFFMAN: Roughly, and at the

1 last -- I unfortunately, the last piece of
2 paper I put in my briefcase I thought was
3 the invoice, and I don't have it.

4 At the last hearing or a few
5 hearings ago I had asked or at the last
6 hearing on the other matter I'd asked that
7 each applicant provide an additional
8 thousand dollar deposit to the town from
9 which we would pay that bill and this bill
10 and whatever other bills, and you all
11 promised and the town never got anything.

12 I will send you the printout that I
13 asked the Building Department to prepare,
14 and I will send you copies of all of his
15 invoices and a formal request for additional
16 deposits.

17 MR. GROSSMAN: Okay.

18 MR. GRUMBACH: Well, what I would
19 like to do is I'd like to schedule the next
20 hearing for 8:00 o'clock on Tuesday, January
21 18th, and I would like to not have to make
22 an agreement that a decision is going to be
23 written by January 31st.

24 Is it your position that that's the
25 only way you will agree to the next hearing

1 on the 18th of January?

2 MR. GROSSMAN: Yes.

3 MR. GRUMBACH: Well, let the record
4 reflect that, and the record will reflect
5 that in my view this is an outrageous thing
6 that you're doing and its, you know,
7 considering the fact that you haven't paid
8 the expert's bill, that's just another
9 activity that I think is blatantly unfair,
10 but you represent your clients the way you
11 see fit.

12 Do we want them to sign an
13 extension to that even though we don't
14 believe that January 31st is a fair date?

15 MS. KOFFMAN: Our alternative is
16 that we make a decision tonight. Since that
17 is status night, I'm uncomfortable although
18 I suppose --

19 MR. GRUMBACH: Can we draft it in a
20 way that we agree to it and say that we do
21 not believe the January 31st date is a fair
22 closing date? It's certainly going to be on
23 the record.

24 MS. KOFFMAN: You want me to put a
25 sentence on our extension form?

1 MR. GRUMBACH: Yes.

2 MS. KOFFMAN: I'm suggesting we
3 ought to put that into our final decision.

4 MR. GRUMBACH: We can certainly do
5 that as well.

6 MR. GROSSMAN: I guess I'm just a
7 little confused on the consternation of your
8 January 18th. The last thing I heard was
9 the abutters were going to have to do the
10 presentation that they did for 137 again on
11 the 18th, and then we were going to have one
12 more hearing and then deliberation. If we
13 stipulated that all that evidence is coming
14 in, I'm a little confused on why moving to
15 the 18th is problematic. I'm not --

16 MR. GRUMBACH: Moving to the 18th
17 is not problematic. The problem is that Mr.
18 Maxson, we have not contacted him. We do
19 not know if he'll be there. We do not know
20 if he believes there is any need for
21 additional evidence. He's an RF expert.
22 None of us here are RF experts.

23 This whole hearing is related to RF
24 issues so we, you know, I would feel more
25 comfortable coming up with a final date for

1 the decision after Mr. Maxson weighs in.

2 That's really the only concern I have.

3 I'm not concerned that the public
4 is going to come in and say they've got six
5 more weeks of hearings. That's just not
6 going to happen unless there's been some
7 major change in circumstances that I don't
8 see tonight, but I'm very concerned that
9 this was a status hearing. We could have
10 come in tonight, and this could have been
11 continued again. Who knows what could have
12 happened? And now you want us to set a
13 final hearing date and a decision date, and
14 to me that's quick.

15 MR. GROSSMAN: I mean, we've had
16 two written reports by Mr. Maxson.
17 Mr. Maxson, from -- I don't know why --
18 wasn't present at the deliberations for 137.

19 MR. COLLINS: Mr. Chairman, I'm
20 going to object to this.

21 MR. GRUMBACH: The reason he wasn't
22 present is because we got an opinion from
23 town counsel that we could not take evidence
24 at that deliberation hearing, so if he was
25 there, that might be construed as evidence,

1 so because of the open meeting laws we
2 essentially said, You give us all of your
3 input at the last public hearing, not at the
4 deliberation hearing, so that's what we made
5 as a Board decision in light of input from
6 town counsel and our understanding of the
7 public meeting law.

8 MR. GROSSMAN: Then maybe my memory
9 betrays me a little, but there was a hearing
10 where we sat here as applicants on the Board
11 waiting for Mr. Maxson who didn't show, and
12 I thought that was the deliberations
13 hearing, and no one knew why. I think Linda
14 Segal tried to call him a couple of times.

15 MS. SEGAL: My recollection was
16 that I tried to call him a couple of times.

17 MS. KOFFMAN: My recollection. Was
18 that the final hearing before?

19 MR. GROSSMAN: Was that the final
20 hearing?

21 MR. COLLINS: It was what it was.

22 MR. GROSSMAN: My point is we can
23 get --

24 MR. GRUMBACH: My memory was there
25 was a scheduling problem, and somebody

1 didn't show up one week, and we came the
2 next week.

3 MR. GROSSMAN: If we need to we can
4 get it by written report if we need to. As
5 I said, we're willing to work within a
6 January 31st time frame. We're not married
7 to the January 18th date. That's the date
8 the Board has set.

9 MR. GRUMBACH: Put it this way --

10 MR. GROSSMAN: If it needs to move
11 a couple days one way or the other, I think
12 that's fine with the applicant to
13 accommodate Mr. Maxson.

14 MR. GRUMBACH: Well, it's difficult
15 for us to have another public hearing before
16 the 18th because of the holidays and, you
17 know, we normally meet on Tuesday nights,
18 and we already have hearings scheduled for
19 the 11th of January unless I'm wrong. Yes,
20 we do. We have three hearings scheduled,
21 and we're starting at 7:30. I don't
22 really -- it's not typical for us to
23 schedule more than three hearings in a
24 night.

25 MR. GOLDBERG: I'm a little puzzled

1 quite frankly why AT&T is controlling us.
2 We've already been sued by your client.
3 Sprint is the applicant who effectively
4 requested and has been requesting
5 consistently status conferences to apprise
6 the Board of the circumstances of its
7 investigation and where it intends to go,
8 and it's conducted that investigation; it's
9 made its determination; it's made its
10 request to the town. The town has issued
11 its response, and AT&T is sitting here
12 telling us what we can and can't do, and I'm
13 not sure why.

14 MR. GROSSMAN: AT&T Wireless is a
15 co-applicant so our signature is required on
16 the form you're about to ask us to sign.
17 I've done most of the speaking probably
18 mostly because Ed Pare is not here, and
19 Scott doesn't have the benefit of the
20 history.

21 MR. GOLDBERG: Then perhaps we
22 ought to reschedule this for a time when Mr.
23 Pare could be here because that would be
24 more convenient to Sprint and to the Board
25 because he has history.

1 MR. GROSSMAN: I haven't heard
2 Sprint's counsel pipe up and say I've said
3 anything that Sprint doesn't agree with.
4 I mean, we've conferred this was what we had
5 come up with as far as between the
6 applicants what was acceptable to both
7 applicants, and I've been the mouthpiece for
8 that, but Scott Lacy could have told you the
9 same thing for the last five to ten minutes.

10 MR. LACY: Just with respect to if
11 the Board's concern seems to be primarily
12 whether or not David Maxson has a need for
13 additional information on the 18th or
14 follow-up questions that can't be answered
15 within the confines of the public hearing on
16 the 18th, would it be something where the
17 Board could foresee if David Maxson, on the
18 18th, attends the public hearing and has no
19 additional questions, that the hearing would
20 be closed and continue it to the 31st would
21 provide the Board with time to render a
22 decision.

23 MR. GRUMBACH: That might well be.
24 I don't want to bind us and say that's going
25 to happen because it may not happen. That's

1 my concern. You know, I don't foresee
2 what's going to happen, and I don't want to
3 set a binding date now.

4 MR. GOLDBERG: And consistent with
5 that concern, it has been Sprint all along
6 asking for and requesting and agreeing with
7 the Board to set up a status hearing at some
8 point in the future.

9 If we, the Board, had any
10 indication or impression that this is where
11 the discussion would have been, I suspect we
12 could have and would have had Mr. Maxson
13 here to circumvent this very problem, but
14 relying upon the representation of Mr. Pare
15 or other counsel who is here on his behalf
16 and your client, we're in this predicament
17 because we're doing exactly what your client
18 has requested. Bring it forward for status
19 conference, and so now we are being
20 penalized for that, in essence.

21 MR. LACY: With respect, if Sprint,
22 on behalf of our client, did try to go the
23 extra mile in terms of fully evaluating the
24 BECO poles, contacting the town and more
25 fully exploring the feasibility of using

1 that as an alternative, that did require
2 some time, and we appreciate the continuance
3 to more fully flush that out, and as
4 submitted to the Board in prior
5 correspondence and officially tonight, we
6 did contact the town. We did follow up with
7 the town with respect to that.
8 Unfortunately the town took the position
9 that it's not a viable alternative on BECO
10 pole 131.

11 MR. COLLINS: That was the Board of
12 Selectmen, as I recall. Not the town.

13 MR. GOLDBERG: That is correct and
14 I accept that nonetheless. We are here for
15 a status hearing. We agreed to this date.
16 Your client agreed to this date. Other
17 counsel on your client's behalf agreed to
18 this date for purposes of a status
19 conference irrespective of what Sprint's
20 determination was, irrespective of what the
21 town's response to that determination was,
22 so now we are being hand-strung by the
23 position that we've been put in in reliance
24 upon being here tonight for status
25 conference and that is, to me, what is most

1 problematic by this procedural sort of
2 conundrum that we are in.

3 If we had some indication or idea
4 that this had to be something more or that
5 we had any belief that Mr. Maxson should
6 have been here to respond to these concerns,
7 he would be sitting here or we would have
8 requested he be sitting here, but he is not,
9 and that is, to me, fundamentally unfair of
10 what the position that you are putting in
11 and that your co-counsel is putting this
12 Board in.

13 MR. GRUMBACH: Stan, is that your
14 tape? Ed Collins.

15 MR. COLLINS: I wonder if I might
16 make a suggestion to the Board through you,
17 Mr. Chairman. My suggestion is as follows.
18 I think no reasonable person can think that
19 a continuance through the 18th is not, in
20 fact, called for for all of the reasons that
21 you have recited and Mr. Goldberg has
22 recited and I think that I've heard from
23 other Board members. The hang-up seems to
24 be how much time after that date the
25 applicants are willing to give, whatever

1 that means, for the Board to write a
2 decision.

3 My suggestion is that the Board
4 might decide on continuing this matter to
5 the 18th and that the agreement might recite
6 that a decision is required by a month after
7 the 18th, some reasonable period of time,
8 not the two weeks that has been talked of
9 here.

10 If, after the meeting on the 18th,
11 the applicants are unhappy, they might be
12 willing to consider a further extension;
13 likewise, the results might be what they are
14 at the time, but that would seem to
15 alleviate the problem of anything happening
16 before the 18th which seems to be
17 essentially physically impossible, and it
18 would alleviate the problem of requiring the
19 Board to file a decision within two weeks.

20 I would urge -- I would urge the
21 applicants to accept that view.

22 MR. GRUMBACH: A month after
23 January 18th, which is February 17th,
24 30 days after the 18th for the filing of the
25 decision. If it happens earlier, it will

1 happen earlier. We don't have any desire to
2 hold onto it.

3 MS. GENNIS: That gives the Board
4 flexibility so that if Mr. Maxson can't come
5 on the dates we would like him to come, we
6 could still have the public voice any other
7 concerns and then still have time to have a
8 discussion.

9 MS. KOFFMAN: There are two
10 alternatives. One alternative is that we
11 have a hearing on December 28th. I don't
12 think anyone on this Board will like that.
13 I don't think that serves the public.

14 MR. GRUMBACH: I'm not going to be
15 here.

16 MS. KOFFMAN: We could have it on
17 January 4th. I don't believe that serves
18 the public because that's still in that
19 school break.

20 MR. COLLINS: The 12 days of
21 Christmas.

22 MS. KOFFMAN: We have a hearing
23 date already scheduled for the 11th. It is
24 filled. We already have residents'
25 applications filling that on the 11th. We

1 have a hearing date on the 25th that we
2 cannot hold because that's town election.
3 By State law we're not allowed to have a
4 hearing on that date, so what we're doing is
5 we're adding in an extra hearing in January,
6 a third hearing, an additional hearing just
7 for AT&T.

8 The problem is we may need -- we
9 may use up that entire night talking or
10 hearing from the public or hearing from
11 Mr. Maxson, and I agree with you,
12 Mr. Maxson says I can't make the 18th, how
13 about the 17th? We have, in the past,
14 agreed and notified the public that we move
15 the hearing by one day or another, but if we
16 can't get it done on the 18th, and we
17 schedule another hearing for the 26th, the
18 Wednesday, an additional four hearings in a
19 month, five days isn't enough to write a
20 decision, so we need more time. We cannot
21 move it back the other way, and we cannot --
22 we can't meet on other nights of the week.
23 These are the nights that the Board members
24 have agreed to meet on.

25 MR. GRUMBACH: Does anybody have a

1 calendar? What is February 17th?

2 MR. GOLDBERG: It's a Thursday.

3 MR. GRUMBACH: Thursday. Do we
4 have an agreement?

5 MR. LACY: February 6th is a
6 Tuesday.

7 MR. GOLDBERG: 6th is a Sunday.
8 I'm not meeting on a Sunday.

9 MR. GROSSMAN: We wouldn't suggest
10 that either.

11 MR. GOLDBERG: 17th is a Thursday.

12 MS. KOFFMAN: Well, it's the date
13 on which the decision would be due.

14 MS. PATTON: Mr. Chairman, I'm
15 concerned in two points and with all due
16 respect --

17 MR. GRUMBACH: Why don't you just
18 give your name for the record?

19 MS. PATTON: Peggy Patton,
20 43 Plain Road. I'm concerned, number one,
21 that Mr. Maxson hasn't been paid. Quite
22 frankly, I know he's very professional. I
23 wouldn't come back until I got paid. I
24 wouldn't come back on the 18th. So they
25 ought to pay these people.

1 MR. GRUMBACH: I don't disagree
2 with you, but I don't know. You know, I
3 suspect he's dealt with cities and towns
4 before, and he probably is used to it.

5 MS. PATTON: But the second point
6 is this is a rerun of what happened before.
7 They came in and said we want you to write
8 that decision on such and such time. It's
9 the same players. It's the same act. It's
10 act two. We get it again. I just don't
11 understand.

12 MR. GRUMBACH: Gentlemen, have you
13 made a decision on February 17th?

14 MR. LACY: Actually what we were
15 contemplating was just continuing it to the
16 18th and then grant an extension until the
17 end of the week following the February 8th
18 meeting which would be, I think, the 11th.

19 MR. GROSSMAN: If my math is
20 correct.

21 MR. GRUMBACH: February 11th. I
22 think that will give us three weeks or so so
23 that's --

24 MS. KOFFMAN: We are extended to
25 and including February 11th, and that's the

1 time within which we make a final decision.

2 MR. GRUMBACH: For people who are
3 not familiar with Massachusetts law,
4 Massachusetts law states that once a public
5 hearing is closed, we have 14 days to render
6 a decision.

7 Now there's some dispute about what
8 rendering a decision means. There are some
9 cases that say if we deliberate and reach a
10 decision, that's rendering a decision.
11 Other cases or other lines of thinking are
12 that we have to actually write the decision
13 and file it, and if we don't write and file
14 it within that 14 days, it's deemed granted,
15 so we're very concerned to not allow that to
16 happen because we, you know, we make our
17 decisions and if people don't like them we
18 can appeal them, but we don't really like
19 them to make -- to have permission granted
20 because our decision has not been formally
21 rendered in a timely manner, so that's what
22 we've been wrangling about. It seems
23 arcane, but that's the way it is. January
24 18th at 8:00 o'clock is the continued
25 hearing and the February 11th which is a --

1 MR. GROSSMAN: Friday.

2 MR. GRUMBACH: -- Friday is the
3 date for our decision.

4 MR. SARIAN: What day?

5 MR. GRUMBACH: Excuse me. I didn't
6 hear what you said, Shaunt. Thank you all
7 for coming tonight.

8 MR. DEXTER-SMITH: Mr. Chairman.

9 MR. GRUMBACH: Yes.

10 MR. DEXTER-SMITH: When you speak
11 with Mr. Maxson what, exactly, are you going
12 to ask him? Are you going to ask him just
13 to attend, or are you going to ask him if
14 he's going to introduce more evidence at
15 that meeting?

16 MR. GRUMBACH: We're going to ask
17 him to attend, and we're going to ask him
18 what happened with Sprint and the BECO
19 towers, and we're going to ask him if, in
20 his opinion, there's any other evidence that
21 he will need or any other assistance he can
22 give us in terms of the RF consulting
23 issues.

24 MR. DEXTER-SMITH: How will we, as
25 the abutters, know what that information is?

1 MR. GRUMBACH: If he gives us
2 anything, it will be part of the record. It
3 will either be in writing in which case
4 he'll submit it to us and it will become
5 part of the public record, or else he'll
6 come here on the 18th, and he'll have a
7 chance to be heard.

8 MR. DEXTER-SMITH: Mr. Chairman,
9 are you looking to introduce the coverage
10 that may or may not occur from the tower
11 that will be erected in Weston? You raised
12 it as if it was a new issue.

13 MR. GRUMBACH: My understanding is
14 that was taken into account in the previous
15 calculations or estimates or --

16 MS. KOFFMAN: The coverage map.

17 MR. GRUMBACH: The coverage maps.

18 MR. DEXTER-SMITH: It wasn't
19 actually in the drive-by because the tower
20 wasn't physically there, so you can't have
21 it in the drive-bys. The drive-by was what
22 the drive-by was.

23 MR. GRUMBACH: Who knows? Maybe
24 there have been drive-bys since we closed
25 the hearing. I don't know about any.

1 MR. DEXTER-SMITH: But you would
2 accept that as new evidence into the record?

3 MR. GRUMBACH: You know, if
4 somebody chooses to put it into evidence,
5 unless there's an objection and some reason
6 not to take it, I think we take evidence,
7 you know, as it comes in.

8 MS. KOFFMAN: Mr. Chairman, if
9 anyone does want to submit additional
10 evidence in connection with both this and
11 137, would we want that to be submitted in
12 advance of January 18th so that we, the
13 Board, would have an opportunity to read it?

14 MR. GRUMBACH: That's a good point.
15 If anybody wants to submit written evidence
16 for the January 18th hearing, you will need
17 to submit nine copies of it so that the
18 Board members can all have it and I would --
19 seven days in advance of the 18th, so by
20 January 11th.

21 MR. COLLINS: Clearly,
22 Mr. Chairman, that doesn't relate to
23 evidence that may be used to dispute
24 evidence that's produced by Mr. Maxson or
25 anybody else on the 18th?

1 MR. GRUMBACH: You're talking about
2 closing arguments or something?

3 MR. COLLINS: No, I'm talking about
4 evidence. I mean, the ultimate test here,
5 the one you'll hear when we're all done, is
6 whether there's substantial evidence on the
7 record to support whatever --

8 MR. GRUMBACH: If you're planning
9 on evidence to rebut evidence that was put
10 in several months ago that's already in the
11 record --

12 MR. COLLINS: I understand that.
13 No problem. I think that's fair. Suppose
14 it turns out on the 18th that Mr. Maxson or
15 somebody else says something that we haven't
16 even heard previously?

17 MR. GRUMBACH: If that happens,
18 that's one reason that I did not want to
19 establish a date to close the hearing.

20 MR. COLLINS: I understand that. I
21 want to make sure we're not agreeing to
22 blindside ourselves.

23 MR. GRUMBACH: What we have now is
24 we have a current date of February 11th to
25 render a decision.

1 MR. COLLINS: Right. Thank you. I
2 appreciate that.

3 MR. GRUMBACH: We're going to keep
4 that in mind because that date may not
5 change, and if so, we're not going to want a
6 lot of evidence coming in after the 18th of
7 January.

8 MR. COLLINS: I just don't want
9 opponents to be blamed for not producing an
10 opposition to evidence that appears for the
11 first time, should it happen. That's all.

12 MS. KOFFMAN: I'm sorry. We do
13 have the opportunity between January 18th
14 and in advance of February 11th to hold
15 another hearing if we needed to, if we had
16 evidence we wanted to discuss or talk about.

17 MR. GRUMBACH: Yes. Stan. Give us
18 name and address, please.

19 MR. ROBINSON: Stan Robinson,
20 9 Wheelock Road. My property is within
21 900 feet of the proposed tower so I'm
22 directly affected, at least as regards to
23 the current 900-foot setback required by the
24 zoning bylaw.

25 MR. GRUMBACH: You're talking about

1 135 Boston Post Road?

2 MR. ROBINSON: Yes, I am. It's a
3 question. Based on something you said
4 earlier, am I -- do I understand it
5 correctly that you disregarded some of David
6 Maxson's presentation because it came in on
7 the wrong day?

8 MR. GRUMBACH: No. You did not
9 hear that. There was some question about
10 whether Mr. Maxson wasn't here one night and
11 I don't remember, but in June or July of
12 last year when we were scheduling the final
13 hearing and the final deliberation, one of
14 the hearings got changed because either we
15 had given the wrong date or somebody had
16 written down the wrong date or somebody
17 didn't appear, and so there was confusion as
18 to which hearing Mr. Maxson appeared at and
19 whether he appeared at the deliberation
20 hearing.

21 My memory is that he did not appear
22 at the deliberation hearing because we were
23 told by town counsel that we could not take
24 testimony at the deliberation hearing and
25 that if he joined us at the last hearing and

1 we asked him a question, that was
2 essentially new evidence and we decided,
3 Well, that doesn't make any sense, so we
4 need his input before the deliberation
5 hearing. So that's what you heard.

6 MR. ROBINSON: Okay.

7 MR. GRUMBACH: Kathy.

8 MS. SCHRIVER: Kathy Schriver,
9 3 Fields Lane. Do Sprint and AT&T have to
10 also submit their new evidence a week before
11 the hearing?

12 MR. GRUMBACH: Well, they said
13 they're not going to submit any, but if they
14 do plan to, yes, they do.

15 MR. LACY: Mr. Chairman, if I
16 could. If David Maxson has any questions
17 with respect to the evidence that has
18 already been submitted and/or the
19 correspondence with the town with respect to
20 the BECO pole, would it be possible for him,
21 through contact of the Board, to ask us for
22 any additional information so that we could
23 respond to that before that public hearing
24 on the 18th?

25 MR. GRUMBACH: You know, that's one

1 of the things we'll pose to him is does he
2 have any additional questions to you?

3 MR. GROSSMAN: I mean, if he knows
4 then today, it would be helpful to know them
5 today and we can hopefully respond.

6 MS. KOFFMAN: We did do that in
7 137. Mr. Maxson prepared a list of
8 questions outside the context of public
9 meeting and submitted them directly to the
10 applicants who submitted answers directly
11 back, and those all went into the public
12 record for people to read, but we did use
13 that.

14 MR. COLLINS: Presumably if this
15 were to happen again the opponents, and we
16 can designate a representative, would also
17 receive, at the same time, that
18 communication?

19 MS. KOFFMAN: No, it would be in
20 the record.

21 MS. GENNIS: It would be in the
22 record.

23 MS. KOFFMAN: It would be in the
24 building.

25 MR. COLLINS: In other words if Mr.

1 Maxson wrote a letter as suggested by
2 counsel here, Mr. Lacy, you're telling us
3 that it would be in the record at the same
4 time so that any foolish member of the
5 public might, in fact, find it and provided
6 that the Building Department would make it
7 available?

8 MR. GRUMBACH: First of all let me
9 respond to what came up before because I've
10 spoken to Sheila. My understanding is that
11 in the past we've had problems on this
12 particular case because the pleadings are so
13 voluminous there may have been
14 misunderstandings in the past about
15 particular documents in the public file, and
16 so the Building Department has made a
17 separate policy for this case for these two
18 consolidated cases which is that they put
19 things in the file and the public can look
20 through them.

21 They do not assist the public in
22 terms of going through those files. It's
23 not because they're not interested in
24 helping the public out. It's simply that
25 they are concerned that the public will say

1 to them, Gee, you didn't tell us this or you
2 told us this wrong, so I think if you come
3 down and look at the files, you're not going
4 to get a lot of assistance from the Building
5 Department.

6 If something has been filed, it
7 should be in the file, but don't expect to
8 ask one of the Building Department employees
9 to assist you.

10 MR. COLLINS: Fair enough. It
11 should be in the file, however.

12 MR. DEXTER-SMITH: So, Mr.
13 Chairman, they get a copy sent to them. We
14 have to go in the Building Department to try
15 and find it? That's the fairness of these
16 hearings that they get a copy sent? They
17 get a letter sent to them?

18 MR. GRUMBACH: No, no, they don't
19 normally get a letter sent.

20 MR. DEXTER-SMITH: Why don't we
21 agree that they have to go and look at the
22 file just like we do? Fair is fair in love
23 and war. These guys are just as capable as
24 I am of getting in the car and driving down
25 here and looking through voluminous files to

1 try to find the letter.

2 MR. GRUMBACH: I don't think that's
3 the issue. I think the issue is if there
4 was communication directly between them and
5 Mr. Maxson which is what I understood the
6 question to be.

7 MS. KOFFMAN: Right.

8 MR. GRUMBACH: It's not a matter of
9 then coming down here, but Mr. Maxson
10 communicates through us, so I don't
11 understand why there would be any
12 communication between them and Mr. Maxson.

13 MS. KOFFMAN: The last time
14 Mr. Maxson sent the Building Department, the
15 Zoning Board through the Building
16 Department, a list of questions and the
17 Building Department forwarded them to the
18 applicants who wrote answers and sent them
19 back to the Building Department, all of
20 those things are in the public record.

21 If the Zoning Board were to take
22 onto itself the burden or the responsibility
23 of mailing a copy of everything that comes
24 in on this case to every member of the
25 public that --

1 MR. COLLINS: That's very unfair,
2 Susan. I've been with -- everything you
3 said tonight I've generally agreed with. I
4 think you've been exemplary until the last
5 comment.

6 People in the public -- I think
7 this is clear -- want to know if the next
8 hearing is presumably going to be the final
9 hearing, that they know at least as early as
10 the applicants know, what's going on, and if
11 that has to do with communications between
12 the applicants and Mr. Maxson or Mr. Maxson
13 and the Board, the people -- I speak for
14 right now including myself and I guess Mike
15 Smith and I think others -- want to know at
16 the same time that everybody else knows,
17 what's going on, and I submit that anything
18 else is unfair.

19 MS. KOFFMAN: Mr. Collins, stop
20 yelling at me. I am the strongest advocate
21 on this Board of the public's right not only
22 to know --

23 MR. COLLINS: I agree.

24 MS. KOFFMAN: -- but to see things
25 in advance. I argue strenuously that when

1 we are handed things at hearings, we should
2 not take them in as evidence at that hearing
3 because the public has not had a chance to
4 see them --

5 MR. COLLINS: I agree. You've been
6 doing it all night. That's great.

7 MS. KOFFMAN: -- the situation that
8 occurred before and that I assume would
9 occur again. Mr. Maxson had a date on which
10 he had to submit, and the date was announced
11 at this hearing at a hearing, that on, I
12 think it was the 25th of whatever the month
13 was, he had to submit to the Building
14 Department, the questions that he wanted to
15 be sent to the applicants so that they would
16 be in the file. The applicants also had a
17 date that they had to submit answers back.
18 I would assume the same kind of thing.

19 Those documents, both Mr. Maxson's
20 questions, if he has any, and remember we're
21 surmising that maybe he might have
22 questions. Those questions would be in the
23 Building Department files, and their answers
24 would be in the Building Department files,
25 and all of those things would have to be

1 submitted in advance of the hearing so that
2 everybody, including Board members, have a
3 chance to read them in advance.

4 MR. GRUMBACH: Everybody
5 communicates through the Building
6 Department. That was the message. So that
7 means if the applicants want to get a copy
8 have to come into the Building Department
9 and public, if they want a copy, have to
10 come into the Building Department, so it's
11 equal access through the Building
12 Department.

13 MR. COLLINS: Thank you. I agree
14 with it.

15 MR. GRUMBACH: Peggy.

16 MS. PATTON: Mr. Chairman, just one
17 question. Peggy Patton, Plain Road. I do
18 remember when Mr. Maxson finally gave his
19 report it was on line and we had to access
20 to go in and get that.

21 MS. KOFFMAN: We put it on line on
22 purpose.

23 MR. GRUMBACH: We specifically
24 asked for that because we knew it would be
25 long.

1 MS. PATTON: Wouldn't it be nice
2 for you to put it on line the questions
3 Mr. Maxson asked these guys and these guys
4 reply back? Couldn't we get it on line?

5 MR. GRUMBACH: We don't know if
6 he's going to ask more questions.

7 MS. PATTON: If he does. If he
8 does.

9 MR. GRUMBACH: If he does, we can
10 ask him to put it on line.

11 MS. KOFFMAN: It was the town clerk
12 who made that decision or the executive
13 secretary who made the decision of what goes
14 on the website. We specifically asked last
15 time.

16 MS. PATTON: Thank you.

17 MR. GOLDBERG: Could I ask a
18 question?

19 MR. GRUMBACH: Go ahead, Eric.

20 MR. GOLDBERG: We have a hearing
21 now for the 18th, and we have a deadline for
22 February 11th to render a decision. Is it
23 contemplated that the evidence is to close
24 the 18th, and that we have a deliberated
25 hearing before the 11th?

1 MR. GRUMBACH: I think that's my
2 present anticipation, and possibly we'd have
3 a deliberation hearing on the 26th.

4 MR. GOLDBERG: Okay.

5 MR. GRUMBACH: Although, you know,
6 it's not cast in stone.

7 MR. GOLDBERG: We'll figure out
8 that date on the 18th.

9 MS. REINHARDT: Hi, I'm Pat
10 Reinhardt. I live on 145 Plain Road, and I
11 am a resident of one of the two houses that
12 fall within 150 feet -- Joanne Barnett is
13 the other resident -- of this BECO 131, and
14 I don't need to hear tonight because it's
15 already late enough, but I would like to
16 hear off line from one of you how it came to
17 be that that tower was proposed by the ZBA,
18 but the more important question I have is
19 just --

20 MR. GRUMBACH: Let me just tell you
21 right now. It was not the ZBA that proposed
22 that tower. The ZBA, last winter, when we
23 were starting the hearings
24 or several hearings into the 135 and 137
25 Boston Post Road hearings, said to the

1 applicants, What sort of search have you
2 made within the neighborhood? And they took
3 the position that they had called or
4 contacted 50 private people and we said,
5 Have you checked any of the BECO towers, any
6 of the series of BECO towers from
7 Route 27 all the way east to the Weston
8 line? And they said, No, we haven't, and we
9 said, Have you read the zoning bylaws
10 because the zoning bylaws give a preference
11 for existing towers.

12 MS. REINHARDT: I understand.

13 MR. GRUMBACH: Exactly. That's
14 what we did.

15 MS. REINHARDT: But more
16 importantly, there's a lot of residents from
17 Plain Road tonight, and I know this will be
18 continued, but where does this tower stand?
19 I'm just not clear where it stands in the
20 process at this point.

21 MR. GRUMBACH: You can look at this
22 letter from November 17th, and you can look
23 at the letter from Sprint, and Sprint
24 basically said we're interested in this one
25 particular tower which is the one that's

1 right off Plain Road. Would you, the Town
2 of Wayland, since you are a part owner of
3 the land that it's on, give your assent and
4 the Board of Selectmen said No, we will not
5 give our assent.

6 MS. REINHARDT: I read both those
7 documents.

8 MS. KOFFMAN: BECO 131 is not in
9 front of us tonight. It is not in front of
10 us, so have to file an application for it.

11 MR. GOLDBERG: There is no
12 application pending and I interpret from the
13 comments of counsel and the substance of the
14 letters that because the town, the Board of
15 Selectmen, have refused to give consent
16 because they own a piece of the property
17 that the applicants effectively have
18 determined that it's not a viable option for
19 them, so I suspect that there will not be an
20 application for that tower.

21 MS. REINHARDT: So is someone going
22 on the record on behalf of the client that
23 they will not be going forward on this, and
24 this is a dead issue for them?

25 MR. GRUMBACH: I interpret what

1 they've said to mean that, but if you want
2 to ask them that, you should either write to
3 the companies or ask counsel.

4 MS. REINHARDT: I mean, everyone
5 here, we're all -- Is it dead? We'd like to
6 know if this is not going to come up again?

7 MR. GRUMBACH: If counsel wants to
8 say further, go ahead.

9 MR. LACY: With respect to the
10 correspondence that was submitted, in light
11 of the town's decision not to permit Sprint
12 to file to zoning, Sprint would not be able
13 to file that -- any application for that
14 particular BECO pole into zoning so no.

15 MS. GENNIS: Dead issue.

16 MR. LACY: The Board of Selectmen's
17 vote, in light of the Board of Selectmen's
18 vote, that site is not going to be brought
19 into zoning on behalf of Sprint or any other
20 applicant at this point.

21 MS. KOFFMAN: This Board cannot on
22 the 18th of January, 11th of February or any
23 other date, cannot make any decision that
24 allows anything on BECO 131. It's not in
25 front of us. It hasn't been filed. It

1 hasn't been publicly noticed in the
2 newspaper. By law BECO 131 cannot -- if you
3 went home, you couldn't wake up in the
4 morning and suddenly discover we approved
5 the tower.

6 MS. REINHARDT: I appreciate that.
7 I just wanted to clarify that. I think
8 there are other people in the room that
9 wanted that clarified.

10 MR. GRUMBACH: We had previous
11 discussions with Attorney Pare several
12 months ago where they were considering the
13 various BECO towers, and we made it clear
14 that if Sprint wanted to formally place a
15 cell tower on one of those towers, they
16 would have to withdraw the 135 Boston Post
17 Road application and submit a new, complete
18 application for a particular BECO tower, and
19 that -- Attorney Pare understood that.

20 MS. REINHARDT: Okay, thank you.

21 MR. DEXTER-SMITH: I have one more
22 question, Mr. Chairman.

23 MR. GRUMBACH: Okay, but, you know,
24 we have another hearing that was scheduled
25 for 8:30.

1 MR. DEXTER-SMITH: There are some
2 special conditions with regard to the
3 owner's use of that particular property.
4 Will the Board be requiring the owner to be
5 present at that meeting to answer those
6 questions?

7 MR. GRUMBACH: I wasn't -- I don't
8 think we were planning to do anything, but
9 if you think that's an important issue, then
10 bring it up at the hearing.

11 MR. DEXTER-SMITH: I think it's a
12 very important issue.

13 MR. GRUMBACH: Then bring it up. I
14 haven't really thought about this for a long
15 time.

16 MR. DEXTER-SMITH: I think he's a
17 witness we would like to talk with about
18 exactly the use of that particular property.

19 MR. GRUMBACH: Well, if you think
20 that's important why don't you write a
21 letter and then it can go into the record
22 and, you know, nine copies by the 11th.

23 MR. GRUMBACH: Last question, Stan
24 Robinson.

25 MR. ROBINSON: This is an honor.

1 MR. GRUMBACH: Better be quick
2 though, Stan.

3 MR. ROBINSON: With regard to the
4 Building Department's determination that
5 it's not going to help any abutter who's
6 going in to look at the file, I'm wondering
7 if there's a way that we can actually get
8 the file in a form that we can actually look
9 at it and not upset the organization of it.

10 MR. GRUMBACH: Go in and ask the
11 Building Department.

12 MR. ROBINSON: They're very
13 discourteous to me. They don't want to have
14 anything to do with me, and it's a very
15 upsetting thing. When I went in yesterday
16 there were two full boxes. One was marked
17 135 and 137.

18 The other one was marked strictly
19 137, so I went into the 135 and 137 one, and
20 I was told, Don't upset that -- Don't upset
21 anything in that box. It's been completely
22 organized. And I looked at it and it's not
23 completely organized. Furthermore, I did
24 not find the letters.

25 MR. GRUMBACH: I'll tell you what,

1 Stan. Right now you're beyond my expertise.
2 You're a tax payer in this town just like I
3 am. If that's the way that people in the
4 town departments treat you, then maybe you
5 ought to go talk to somebody in the town
6 about that, but I think, you know, the
7 public should have a right to, you know, I
8 think, look at materials that are on file.

9 MS. KOFFMAN: I want to say one
10 thing on behalf of the Building Department
11 workers. I believe that what the Building
12 Department said was not that they would not
13 help, but that they would not pull papers
14 from the files or make any assertions on
15 what had or had not been filed because in
16 the past one Building Department employee
17 was not aware that something had been filed
18 and that person said no, nothing's been
19 filed. The other employee had filed
20 something. She knew something had been
21 filed, but the first one didn't, and that
22 became a problem because person B who didn't
23 know and hadn't done the filing, so the
24 safer course was don't make assertions,
25 invite the public to look for themselves

1 rather than say on behalf of the Building
2 Department and the planning Board what has
3 or hasn't been filed. That's all. I don't
4 think it's a matter of that they said they
5 won't help the public in this case. They
6 don't want to -- they don't want to pull
7 papers.

8 MR. GRUMBACH: Stan, I am a hundred
9 percent certain if you went into the
10 Building Department tomorrow that Norma and
11 Sheila and Dan would be very polite to you,
12 but if you don't find that's true then, you
13 know, you're a tax payer. You do what you
14 think is appropriate. Anyway, thanks all
15 for coming tonight. This hearing is
16 continued to the 18th of January.

17 (Whereupon the deposition
18 suspended at 9:38 p.m.)
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24
25

1 Commonwealth of Massachusetts.
2 South Middlesex, ss.
3
4

5 I, Teresa E. Costello, Notary
6 Public in and for the Commonwealth of
7 Massachusetts, do hereby certify that
8 there came before me on the 14th day of
9 December, 2004, A hearing of the Zoning
10 Board of Appeals of Wayland, Massachusetts,
11 that the ensuing hearing was reported
12 stenographically by me and transcribed into
13 typewriting under my direction and control;
14 and that the within transcript is a true
15 record.

16
17 IN WITNESS WHEREOF I have hereunto
18 set my hand and affixed my seal of office
19 this 26th day of December, 2004, at
20 Framingham.
21
22
23
24
25

Teresa E. Costello

Teresa E. Costello

CSR #1452S98

Registered Professional Reporter

Notary Public

Commonwealth of Massachusetts

My Commission

Expires: 5/29/09

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